

STEPHANIE KRENT (*Pro Hac Vice*)  
 ALEX ABDO (*Pro Hac Vice* motion forthcoming)  
 KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY  
 475 Riverside Drive, Suite 302  
 New York, NY 10115  
 Tel.: (646) 745-8500  
 Email: stephanie.krent@knightcolumbia.org

CARA GAGLIANO (SBN 308639)  
 AARON MACKEY (SBN 286647)  
 ELECTRONIC FRONTIER FOUNDATION  
 815 Eddy Street  
 San Francisco, CA 94109  
 Tel.: (415) 436-9333  
 Email: cara@eff.org

MARIA DEL PILAR GONZALEZ MORALES (SBN 308550)  
 SHUBHRA SHIVPURI (SBN 295543)  
 SOCIAL JUSTICE LEGAL FOUNDATION  
 523 West 6<sup>th</sup> Street, Suite 450  
 Los Angeles, CA 90014  
 Tel.: (213) 973-4063  
 Email: pgonzalez@socialjusticelaw.org

*Attorneys for Plaintiffs A.B.O. Comix, Kenneth Roberts, Zachary Greenberg, Ruben Gonzalez-Magallanes, Domingo Aguilar, Kevin Prasad, Malti Prasad, and Wumi Oladipo*

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

A.B.O. Comix, Kenneth Roberts, Zachary  
 Greenberg, Ruben Gonzalez-Magallanes,  
 Domingo Aguilar, Kevin Prasad, Malti Prasad,  
 and Wumi Oladipo,

Plaintiffs,

v.

County of San Mateo and Christina Corpus, in  
 her official capacity as Sheriff of San Mateo  
 County,

Defendants.

Case No.: 3:23-CV-1865-JSC

**OPPOSITION TO DEFENDANTS'  
 ADMINISTRATIVE MOTION FOR  
 LEAVE TO FILE SUR-OPPOSITION**

Complaint Filed: March 9, 2023

1 This Court should reject Defendants’ motion for leave to file a sur-opposition to Plaintiffs’  
 2 remand motion, ECF No. 40, because it is irrelevant. For the reasons Plaintiffs identified—which  
 3 Defendants have not contested—remand is appropriate under 28 U.S.C. § 1367(c). At bottom, only  
 4 state courts can authoritatively resolve the novel state-constitutional claims Plaintiffs raise.

5 A defendant does not and should not have the power to use counterclaims to dictate whether  
 6 a case proceeds in state or federal court—this principle is at the heart of the well-pleaded complaint  
 7 rule. *See Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831–32 (2002);  
 8 *Redevelopment Agency of City of San Bernardino v. Alvarez*, 288 F. Supp. 2d 1112, 1115 (C.D.  
 9 Cal. 2003). Defendants’ recently filed counterclaims therefore should not alter the Court’s decision  
 10 whether to exercise supplemental jurisdiction over the Amended Complaint, which raises only  
 11 novel questions of state law and no federal claims. Nor should they lead this Court to sever the  
 12 case and retain jurisdiction over the counterclaims, as state courts are “presumptively competent  
 13 . . . to adjudicate claims arising under the laws of the United States.” *Tafflin v. Levitt*, 493 U.S.  
 14 455, 458 (1990). In the only case upon which Defendants rely, *Ampleman v. Trans States Airlines,*  
 15 *Inc.*, the court found the presence of federal counterclaims relevant to its analysis because those  
 16 counterclaims were raised before the plaintiffs had amended their complaint and moved to remand,  
 17 and because the case had already proceeded through discovery and partial summary judgment  
 18 briefing on one of the state-law claims. 204 F.R.D. 437, 439–40 (E.D. Mo. 2001). Remand would  
 19 have been inefficient there because of the judicial resources already expended. Not so here.

20 Because Defendants’ recent filings do not alter the Court’s analysis of whether to retain  
 21 jurisdiction over the case—and do not change the fact that remand remains appropriate under  
 22 § 1367(c) and the judicial values of economy, convenience, fairness, and comity—the Court  
 23 should deny Defendants’ administrative motion.

24 DATED: June 27, 2023

Respectfully submitted,

25 /s/ Stephanie Krent

26 Stephanie Krent (*Pro Hac Vice*)

27 Alex Abdo (*Pro Hac Vice* motion  
 forthcoming)

28 Knight First Amendment Institute at Columbia  
 University

475 Riverside Drive, Suite 302  
New York, NY 10115  
T: (646) 745-8500  
stephanie.krent@knightcolumbia.org

Cara Gagliano (SBN 308639)  
Aaron Mackey (SBN 286647)  
Electronic Frontier Foundation  
815 Eddy Street  
San Francisco, CA 94109  
T: (415) 436-9333  
cara@eff.org

Maria del Pilar Gonzalez Morales (SBN  
308550)  
Shubhra Shivpuri (SBN 295543)  
Social Justice Legal Foundation  
523 West 6<sup>th</sup> Street, Suite 450  
Los Angeles, CA 90014  
T: (213) 973-4063  
pgonzalez@socialjusticelaw.org

*Counsel for Plaintiffs*